Supreme Court U.S.
FILED

05 1071 DEC 12 2005

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

GREGORY K. CHASE,

Petitioner,

v.

JORDAN SCHOOL DISTRICT.

On Petition For Writ Of Certiorari
To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

Gregory K. Chase
Petitioner Pro Se
8344 South Monroe Street
Midvale, Utah 84047
(801) 566-1454

QUESTIONS PRESENTED

1) Whether *Siegert* overturned *Paul v. Davis*?

2) Whether one's resignation in good standing from a past employer precludes an employee from § 1983 recovery for damages when the former employer defames the employee to the prospective future employer resulting in the direct loss of that future employment opportunity?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iii
INTRODUCTION	1
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
I. Nature of the Case	3
II. Course of the Proceedings	4
III. Disposition in Trial Court	7
IV. Statement of Facts	7
REASONS FOR GRANTING THE PETITION	15
CONCLUSION	19

TABLE OF CITED AUTHORITIES

Cases	***Pages***
Adamson v. Provo, 819 F. Supp. 934 (D. Utah 1993)	4
Chase v. Jordan School District, 20040[illegible]-CA (unpublished)	App. 2
Chase v. Midvale City, 20041127-CA (unpublished)	1, App. 28
Boyce v. Marble, 982 P.2d 565 (Utah 1999)	6
Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)	13-14
Paul v. Davis, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976)	14, 16
Siegert v. Gilley, 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991)	14, 15, 16
Stidham v. Peace Officer Standards and Training, 265 F.3d 1144 (10th Cir. 2001)	14, 15
Randall v. United States, 30 F.3d 518 (4th Cir. 1994)	15

TABLE OF CITED AUTHORITIES (cont.)

Statutes	***Pages***
42 U.S.C. § 1983	1, 3
Utah Code Ann. § 78-12-28 (1953, as amended)	4
Utah Code Ann. § 60-30-1 (1953, as amended)	4

INTRODUCTION

This is an appeal of a former police officer employee of Jordan School District, Gregory K. Chase, who after voluntarily resigning from the district, sought employment with another police department, Midvale City Police. While his application was pending, an assistant chief of Midvale P.D., Dan Pearson, spoke with the chief of Jordan School District, Clyde Shaw, outside of Jordan School District policy concerning Mr. Chase. In that conversation, the chief expressed knowingly false and defamatory statements to Asst. Chief Pearson which ultimately proximately resulted in Mr. Chase's denial of employment. At the time of the conversation, Chief Shaw, while in uniform and as Chase's former supervisor, Chief Shaw acted under *color* of authority, whether "any statute, ordinance, regulation, custom, or usage of any state." See 42 U.S.C. § 1983.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

Gregory K. Chase (hereinafter "Chase") respectfully petitions for a writ of certiorari to review the judgment of the Utah Court of Appeals in this case, after the Utah Supreme Court declined to issue a writ of certiorari.

OPINIONS BELOW

The decision of the Utah Supreme Court denying the

Petitioner a writ of certiorari to the Utah Court of Appeals and the Utah Court of Appeals' Memorandum Decision are contained in the Appendix at App. 1-5. Concerning the decision of Chase's related appeal, *Chase v. Midvale City*, 20041127-CA is contained in the Appendix at App. 28-31.

JURISDICTION

The final decision of the Utah Supreme Court denying the Petitioner a writ of certiorari to the Utah Court of Appeals was entered on September 15, 2005. (App. 1). The jurisdiction of this Court to review this matter is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case:

I. The Due Process clause of the Fifth Amendment, which provides, inter alia:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II. The Due Process clause of the Fourteenth Amendment, which provides, in Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following State statutory provisions are involved in this case:

> Utah Code Ann. § 10-3-1001 (1953, as amended).
>
> Utah Code Ann. § 10-3-1002 (1953, as amended).

STATEMENT OF THE CASE

I. Nature of the Case:

This is a civil action wherein, Mr. Chase appeals his 42 U.S.C. § 1983 action for defamation and deprivation of liberty interest claims. (App. 9) This case arises out of the wrongful interference of an employment application in that both Jordan School District and Mr. Chase's prospective employer, as public employers have established employment policies and procedures. (App. 9) In respect to Jordan School District, Chief Clyde Shaw made knowingly false and reckless statements about him under color of his apparent authority as the Chief of Jordan School District and as the former supervisor

of Mr. Chase. (App. 9) The statements were defaming and resulted in the deprivation of a liberty interest (i.e., an employment opportunity).

II. Course of the Proceedings:

Mr. Chase appeals Judge Medley's decision to grant Jordan School District Summary Judgment and for the denial to amend the plaintiff complaint to sue Clyde Shaw in his personal capacity–since the granting of summary judgment was as to Jordan School District (the only party previously sued) in its official capacity.

On June 6, 2003, Mr. Chase sued Jordan School District and John Does I-V.[1] (App. 10) Prior to filing, Midvale City refused to share with Mr. Chase the name of his tortfeasor from Jordan School District, and Jordan School District ignored Mr. Chase's notice of claim. (App. 10). Nevertheless, Jordan School District responded on July 1, 2003 by filing an Answer. In that Answer, the defendant claimed in part that it was "without knowledge or information sufficient to form a belief

---

1 John Does were sue because at the time of filing the details of and the source of the defamation against Mr. Chase was unknown to him. It was during the course of litigation that the individual, Clyde Shaw was made known to him. Since Mr. Chase alleged conduct of employees in their official capacity, no amendment was sought to include a cause of action against Mr. Shaw in his personal capacity until after the discovery and the dismissal by the court. (R. at 2). *See*, *Adamson v. Provo*, 819 F. Supp. 934, 947 (D. Utah 1993) ("Utah Code Ann. § 78-12-28(1) provides two years for actions against officials acting in their "official capacity.")

as to the truth of" all of Plaintiff's factual allegations 9-22.[2] (App. 10) An attorney planning meeting was conducted on August 18, 2003 and the report was filed on August 29, 2003. (App. 10) In that schedule, inter alia, the parties agreed to exchange initial disclosures by September 12, 2003; to the cut-off the date to amend pleadings by November 3, 2003; to complete all discovery by April 16, 2004; and to a dispositive motion cut-off of May 21, 2004.

Then the parties engaged each other in discovery. (App. 11) Five months into discovery and four months early, defendant filed its Motion For Summary Judgment. (App. 11) The motion was filed without amending its Answer. (App. 11) In that motion, defendant claimed, inter alia, that because Chase voluntarily resigned from employment with the Jordan School District, and applied for employment elsewhere, plaintiff could not assert a liberty interest claim for any subsequent defamation. (App. 11)

The defendant's motion was supported by memorandum and the affidavit of George A. Welch, the executive director for the school district. (App. 11) During the pendency of the motion, the parties continued to conduct discovery, including the deposition of Dan Pearson on April 15, 2004 and April 28, 2004. (App. 11) Meanwhile, before the deposition had taken place, Mr. Chase responded to motion for summary judgment

---

2 In violation to Utah R.Civ.P. 8 and the principles of the notice of claim requirements of the Governmental Immunity Act, formerly 63-30-1 et seq. Jordan School District's averments were never amended, even when it filed it's Motion For Summary Judgment–at that time it obviously was aware that Clyde Shaw made the defaming statements. (App. 10).

on February 23, 2004. Jordan School District filed a reply on February 26, 2004. On Jordan School District's request to submit for decision, the Court scheduled oral arguments and a hearing was conducted on May 10, 2004 before the Honorable Tyrone E. Medley. At the conclusion of the hearing, the court took the motion under advisement. The following day, May 11, 2004, Judge Medley issued a minute entry granting summary judgment based upon "all of the undisputed material facts, and all of the legal authorities and analyses set forth in defendant's Memoranda in support and reply."

On May 20, 2004, believing the matter dismissed only Jordan School District and before a final order was submitted, plaintiff moved to amend his complaint substituting John Does I - V with Clyde Shaw, based upon the testimony of Dan Pearson on April 15, 2004 and April 28, 2004. (App. 11) During the deposition, it was revealed that counsel, Morris O. Haggerty had known the details of the Dan Pearson-Clyde Shaw conversation, and of the defamation done by Clyde Shaw since April 2003 during a private interview. (App. 11) This revelation obviously demonstrated that the averments contained in the Answer filed on July 1, 2003 was not done in good faith and justified the filing of an Amended Complaint. (App. 12) The plaintiff's Amended Complaint was filed on May, 20, 2004, contemporaneously with Chase's motion to amend and his supporting memorandum and affidavit relying, among other things *Boyce v. Marble*, 982 P.2d 565, 568 (Utah 1999) ("On occasion, justice and fairness will require that a court allow a party to designate witnesses, conduct discovery, or otherwise perform tasks covered by a scheduling order after the court-imposed deadline for doing so has expired")[3] (App. 12) On

---

3 even though in this matter no scheduling order had been imposed by the court because the parties only agreed to

June 1, 2004, Judge Medley signed the order dismissing Jordan School District. (App. 12) On that same date, the school district opposed Chase's motion to amend, despite being dismissed from the action. (App. 12) Because Plaintiff believed that the school district lacked standing to oppose the motion to amend, Mr. Chase filed a motion to strike the memorandum on June 15, 2004. (App. 12) On June 16, 2004, the school district responded to the motion to strike. (App. 12) On June 18, 2004, Judge Medley issued a minute entry again in favor of the school district incorporating "all of the legal analyses and authorities set forth in defendant's Memorandum in opposition." (App. 12)

On July 1, 2004, a final order was entered against Mr. Chase. (App. 12) This appeal followed with the filing of Mr. Chase's Notice of Appeal on July 2, 2004. (App. 12)

III. Disposition in Trial Court:

As stated above, on June 1, 2004, an order was entered against Mr. Chase granting summary judgment for Jordan School District. (App. 12) Then on July 1, 2004, the order was entered against following rejection of plaintiff's motion to amend complaint. (App. 12).

IV. Statement of Facts:

In approximately April, 2002, Mr. Chase voluntarily resigned from his employment with Jordan School District. He was employed there from 1994 to 2002 as a police officer. When he left Jordan School District it was not under a threat of

---

a plan. See attorney's planning meeting reports. (App. 12).

discharge, rather he left in good standing. (App. 13)

Three months later in June, 2002, Mr. Chase applied for a position with Midvale City and the Midvale City Police Department for a police officer position. He passed the "B-Pad" written examination, and shortly thereafter, pursuant to policy he was scheduled for an oral interview with a Oral Board of four members. (App. 13)

Before appearing before the board, unbeknownst to Mr. Chase, a person or persons at the Jordan School District (later discovered to be Clyde Shaw of Jordan School District, the Chief of Police and Mr. Chase's supervisor) conveyed knowingly false information about Mr. Chase to Dan Pearson, an assistant police chief of Midvale City. (App. 13)

In his deposition, Dan Pearson testified:

Q All right. Now, it has been reported that you were privy to a comment made by Clyde Shaw about Greg. Are you familiar with the comment that I am talking about?

A Uh-huh.

Q What comment was that?

A I was attending a LEADS meeting at the Salt Lake County Sheriff's Office. Prior ro the meeting starting, everyone is walking around having small talk with each other and I had gone up and gotten a drink and was standing there and Clyde Shaw walked up and, to the best of my recollection, Clyde had been off sick or something, I don't remember exactly what for,

but it sticks in my mind that he had been off for awhile because of some illness. And so I asked how he was doing. He said he was doing better. I asked him how things were going and he made the comment to me that it had been – t had been a pretty good week. And I asked what he meant, or something alor ʒ that line, and he indicated to me that they had gotten rid of Greg Chase, and he said that it was a very happy morning for him when he was able to drive Greg Chase home and drop him off and know that he had gotten rid of a significant problem we had. That's the crux of it. I don't remember the exact wording but that was basically what was said.

Q Did you – at that time did you ask him why Greg had been a problem?

A I didn't go into this in depth. He just indicated that it had been a long standing problem and that was – I mean that was the end of the conversation.

(App. 13-14) He, in turn, conveyed that false information to Tim Start, one or more members of Chase's hiring board of the Midvale City Police Department. (App. 14) Mr. Start shared this information with another member of the board, Tony Mason, that he heard in fact Mr. Chase had been fired from Jordan when he was not. (App. 14) When Start compared the false information to Mr. Chase's application, Tim Start concluded that Mr. Chase was lying. (App. 14) The application reads, "Reason for Leaving: Wanting to do something new" is what Mr. Chase wrote. (App. 14)

THE FOLLOWING FACTS ALLEGED IN PLAINTIFF'S COMPLAINT ARE DEEMED ADMITTED PURSUANT TO UTAH R.CIV.P. 8 FOR NON-DENIAL (Except as otherwise referenced to the record elsewhere):

So Mr. Chase entered into a hostile oral hiring board feeling optimistic about his chances for hire, as he has been in law enforcement for nineteen (19) years; he knew most of the officers in the Midvale City Police Department; and he was a Midvale resident. (App. 15) When Mr. Chase went into the room for the oral interview, he felt comfortable and confident, as he knew all four (4) of the individuals on the Oral Board. As each member asked Mr. Chase questions, he answered each question openly and honestly. As he left, he felt as though he had done a really good interview. (App. 15)

After having not heard anything back from Midvale City Police Department during the following almost three (3) weeks, Mr. Chase contacted one of the individuals in the Oral Board, Brian Todd. This individual advised Mr. Chase that Mr. Chase has ended up being ranked somewhere around 12th to 14th on the hire list. At first, Mr. Chase thought Mr. Todd was just joking with him. Then, after a few minutes, Mr. Chase realized that Mr. Todd was serious. Mr. Chase asked "how could this be?" Mr. Todd explained that one of the individuals on the Oral Board, Tim Start, had told the others of the Oral Board before Mr. Chase even walked into the interview room that: (1) Mr. Chase was lying about why he had left his previous employer, that Mr. Start told the others in the room that he had a good source-that someone from Mr. Chase's previous employer had told them that Mr. Chase had been fired but that Mr. Chase had not quit; and (2) Mr. Start also stated that someone from Mr. Chase's previous employer had told them that Mr. Chase had been called by his Chief one day, told to turn in all his equipment and gear, and was driven home by the Chief. Tim

Start stated that because of such things, Mr. Chase must be lying about his previous employment history and, therefore, he was going to fail Mr. Chase in the oral interview. (App. 15)

Tim Start, along with another individual on the Board, Tony Mason, both failed Mr. Chase on question

> # 4). Tell us about your employment history for the past 5 years and question # 4a. Why did you leave those jobs?"

Both of the individuals gave Mr. Chase the failing grade zero (0) points for his answer (which, by the way, Mr. Chase answered honestly and correctly). (App. 16)

Mr. Todd, the officer who advised Mr. Chase of what had happened before the Oral Board interview, also told Mr. Chase that he should contact the Midvale City Chief of Police and let him know of what happened. That same day pursuant to policy, (App. 16), Mr. Chase did try to contact the Chief to lodge a protest, but only got his answering machine. The next day one of the individuals on the Oral Board, and one who had failed Mr. Chase based upon Start's false information, Tony Mason, contacted Mr. Chase. This individual (Tony Mason) advised Mr. Chase that the Chief would not bring up what he knew about what happened before he met with the Oral Board, and Mr. Mason denied any knowledge of what had been reported to hm by Todd Brian. (App. 16)

Therefore, Mr. Chase re-contacted Brian Todd and Mr. Todd once again told Mr. Chase how Mr. Start had stated that someone from Mr. Chase's previous employer had told them that Mr. Chase had been fired and that Mr. Chase had been fired and that Mr. Chase was lying to them about his quitting his pervious employer. Mr. Chase told Mr. Todd again that he had

not been fired, that he had voluntarily resigned. Mr. Chase even stated that he would show the Oral Board a copy of his letter of resignation, and the letter from his former Chief, Defendant Shaw, who stated that Mr. Chase left in good standing. (App. 16) Mr. Chase even offered to show them the decision from an unemployment judge. (App. 16) (At the time, Mr. Chase was attempting to get unemployment benefits, and Judge Patterson had denied his eligibility because Mr. Chase had quit and had not been fired). (App. 17)

Mr. Todd told Mr. Chase he had confronted Tim Start and Tony Mason about their comments before Mr. Chase's interview with the Board; telling them that he personally had spoken to Mr. Chase, and that Mr. Todd personally would like the opportunity to verify everything Mr. Chase had been telling him through performing a background check on Mr. Chase. Messrs. Start and Mason told Mr. Todd that would not be necessary, that they were sure Mr. Chase had been fired, and that Mr. Chase had lied to the Board. (App. 17)

Mr. Chase couldn't understand how someone who had as much experience as he had who had done so much for the State of Utah, could be "blacklisted" based on false information. Mr. Chase had been involved in many high profile events/cases in the State's history over the last 20 years. He had worked on the Unsolved Homicide Task Force, the Original Gang (Operation Red Flag) Task Force, the Mark Hoffman (Mormon Murder Investigation), the Ervil Lebaron Task Force; he was an original member if the FBI's Fugitive/Violent Crimes Task Force. Mr. Chase could not believe how someone with this much background was now not even able to get a fair interview. (App. 17)

Mr. Chase then contacted Attorney Shawn Robinson, and explained what was going on. Mr. Chase told Mr.

Robinson that within days of being interviewed that he could not talk to the Midvale City Chief of Police, he received a letter from Tony Mason, one of the individual's who had failed him, stating that all information in regard to Mr. Chase's testing and oral interview was going to be destroyed within a few days. Attorney Robinson subpoenaed the information on the testing results, which showed exactly what Mr. Chase had already been told, that he had failed on that particular question by Tim Start and Tony Mason. (#4, 4a). (App. 17)

During the next week or so, Mr. Chase contacted Midvale City Councilman Wayne Sharp, and told him about what happened, and how Mr. Chase knew the Board had not handled this situation properly. Mr. Sharp advised Mr. Chase that he would look into this matter. Within a week, Mr. Chase received a phone call from Mr. Mason, who indicated that he wanted Mr. Chase to come in for a talk. Mr. Chase figured that maybe at this point he would get what he was asking for, an apology and the name of the person from his previous employer who uttered or published false information about him. Instead, all Mr. Mason wanted to talk about was that the other person on the Oral Board (Brian Todd) who had told Mr. Chase about what had happened. Mr. Mason wanted a statement from Mr. Chase about what Mr. Todd had told Mr. Chase. Mr. Chase refused to give information to him. Mr. Chase asked Mr. Mason directly for the name of the person from his previous employer who had since said these things about him. Mr. Mason would not respond. Mr. Chase asked Mr. Mason if Mr. Chase would sign a waiver allowing the Board to get Mr. Chase's personnel records from his previous employer to see under what circumstances Mr. Chase did leave. Mr. Chase agreed and signed the waiver. As Mr. Chase was leaving, Mr. Mason stated, "If it's not like your saying, maybe you can test again, then, next time you'll get a fair interview!" Mr. Chase left even more frustrated. (App. 18)

Next, Mr. Chase had a meeting with the Midvale City Administrator, Lee King. Mr. Chase told Mr. King that he was aware of the problems Brian Todd was now experiencing because he had spoken to Mr. Chase regarding what had happened during the Oral Board. Mr. Todd had been told he was going to be written up, not allowed to participate on the Oral Board anymore, and that he could not even possibly be terminated. Mr. Chase told Mr. King they were harassing the wrong person, that they should be looking in to the actions of Tim Start and Tony Mason, who had slandered him, who actually violated City Policies and Procedures, and taken away Mr. Chase's opportunity to work for Midvale City Police Department. Instead, they were going after the honest, ethical person. Mr. King told Mr. Chase that they had spoken to Tony Mason and Mr. Mason stated, "What was said before Mr. Chase's interview, didn't really have any effect on how they scored him." (An admission that it had actually occurred.) Mr. Chase asked Mr. King how Messrs. Start and Mason knew it had no effect? Mr. King had no answer. Mr. Chase told Mr. King that all Mr. Chase wanted at the time was the name of the person from his previous employer who distributed the false information to Midvale City. (App. 18-19)

Subsequently, Mr. Chase learned that Brian Todd had several meetings regarding this situation. Mr. Todd had one meeting with Tony Mason, the superior officer who failed Mr. Chase in the oral interviews, and the one with the Lee King, the City Administrator. Mr. Chase is aware of what came out of those meetings, and aware of the evidence that proves that what Mr. Todd told Mr. Chase did in fact occur, and the actions of those covering this up. (App. 19)

After speaking to Lee King, Mr. Chase left several messages for the Mayor of Midvale City, JoAnn Seghirst, to contact Mr. Chase but never received a response. (App. 19)

REASON FOR GRANTING THE PETITION

Certiorari Should Be Granted In This Case To Clarify Confusion Created By The 1991 *Siegert* Decision to as to *Paul v. Davis*. The Tenth Circuit, in *Stidham*, as Well as Other Circuits Has Opined Confusion Exists as a Result of *Siegert*.

In *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), the Supreme Court ruled that the mere failure to rehire a nontenured teacher did not implicate a liberty interest. In so holding, the *Roth* Court observed that if, in failing to rehire, the government "imposed . . . a stigma or other disability that foreclosed [one's] freedom to take advantage of other employment opportunities," 408 U.S. at 573, 92 S. Ct. at 2707, a liberty interest would be implicated. In *Paul v. Davis,* 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976), and *Siegert v. Gilley,* 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991), however, the Court cautioned that government defamation, standing alone, cannot be the basis of an "employment foreclosure" liberty claim. Thus, in *Paul,* this Court held that charges of governmental defamation, "standing alone and apart from any other governmental action," did not state a due process claim. 424 U.S. at 694, 96 S. Ct. at 1157. *Siegert* affirmed that "[d]efamation, by itself, is . . . not a constitutional deprivation," and held that when, as in Siegert's case, an alleged governmental defamation is uttered apart from any particular action involving the subject's employment, *i.e.*, subsequent to a voluntary resignation, it cannot be the basis for a due process claim, even where that defamation "undoubtedly ... impair[s one's] future employment prospects." 500 U.S. at 233-34, 111 S. Ct. at 1794.

This Court held that Siegert did not state a claim for the violation of a protected liberty interest. *See id.* at 233-34. This

Court reasoned that Siegert had not been terminated incident to the alleged defamation and that damage flowing from an injury to one's reputation "may be recoverable under state tort law but it is not recoverable in a [federal] action." *Id.* at 234. Inexplicably, and despite a vociferous dissent, the five-member majority in Siegert made no reference to the constitutional deprivation of liberty caused by the foreclosure of employment opportunities, which the Court had previously approved in *Paul.*

In the recent 2001 Tenth Circuit case, *Stidham v. Peace Officer Standards and Training*, 265 F.3d 1144 (10th Cir. 2001), where the facts were indistinguishable to *Siegert*, the Tenth Circuit affirmed the dismissal. But that court also clarified *Siegert*, stating that the Supreme Court did not expressly overrule its prior precedents *Paul*, *Cafeteria Workers*, and *Roth*. But then turning to Stidham's situation it added,

> however, despite its lack of explanation, the Court's holding in Siegert compels us to conclude that even though this action would have survived under Paul and its progeny, it has foreclosed relief under the Liberty Interest Clause of the Constitution on the facts alleged in this case.

Id., at 1154. This matter, fortunately is distinguishable from both *Stidham* and *Siegert.* In both *Stidham* and *Siegert*, those plaintiffs resigned under the threat of termination. In this matter, Chase resigned in good standing–in a July 22, 2002 letter from George Welch, he wrote "The fact remains that Mr. Chase could still be working for the Jordan School District had he not chose to quit." (App. 24) So subsequent to Chase's resignation, (App. 24), when Clyde Shaw allegedly made the defamatory statements to Dan Pearson, Chase was certainly damaged from his future employment opportunity with

Midvale. The statements he expressed to Dan Pearson is even belied by Chief Shaw's own letter of recommendation. (App. 13-14) Chase was even informed that had he not resigned he certainly would have had remained employed. So subsequent to Chase's resignation, when Clyde Shaw made the defamatory statements to Dan Pearson, Chase was certainly damaged from his future employment opportunity with Midvale. The statements he expressed to Dan Pearson is even belied by Chief Shaw's own letter of recommendation.[6]

Chase's proposition is supported by this Court's refusal to grant certiorari in the Fourth Circuit case, *Randall v. United States*, 30 F.3d 518 (4th Cir.1994), *cert. denied* 514 U.S. 1107, 115 S. Ct. 1956, 131 L. Ed. 2d 849 (1995), in which the court had the opportunity to apply *Paul* and *Siegert*. In *Randall*, the Army took action restricting the practice privileges of the plaintiff, Randall, who was an Army anesthesiologist. *Id.* at 521. The Army reported the restrictions on Randall's practice to the National Practitioner Data Bank as an adverse action. Randall voluntarily left the Army before the Army limited her privileges. *See id.* Nonetheless, the Army reported the restriction to the National Practitioner Data Bank because hearings on the restrictions began while Randall was still in the Army. *See id.* at 521, n. 3. In her claim against the Army for deprivation of her constitutionally protected liberty interest, Randall did not allege that the Army's limitation on her practice and the report to the Data Bank violated her constitutionally protected liberty interest by limiting her practice as an Army anesthesiologist or by preventing her from practicing as an anesthesiologist outside of the Army. Instead, Randall claimed that the Army violated her liberty interest because the Army's report "denied her the right to practice her profession free from an imposed stigma." *Id.* at 522. Despite this contention, the Fourth Circuit affirmed the district court's decision to dismiss the case. The court held that "action which inflicts a stigma on

the reputation of a plaintiff causing that plaintiff hardship in obtaining employment is harm to reputation that does not rise to the level of a constitutional deprivation." *Id.* at 522 (citing *Paul,* 424 U.S. at 708-709, 96 S. Ct. 1155, 47 L. Ed. 2d at 418; *Siegert,* 500 U.S. at 233, 111 S. Ct. 1789, 114 L. Ed. 2d at 288).

Even in light of *Randall,* what is certain is that Randall's employer took tangible adverse action against Randall similar to the tangible adverse action Siegert and Stidham apparently attempted to avoid in their situations. All these cases are clearly distinguishable from this case. Chase was faced with any tangible adverse action. In contrast to *Randall, Stidham* and *Seigert,* Chase was in good standing with his employer, voluntarily resigned with recommendations of his supervisor. Dispute this good standing, Chase's former Chief, Clyde Shaw, recklessly published false information to Chase's future employer, knowing the statements to be harmful. The remarks made by Shaw were clearly libel per se.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory K. Chase
Petitioner Pro Se

Address:

Gregory K. Chase
8344 South Monroe Street
Midvale, Utah 84047

(801) 566-1454

ADDENDUM

App. 1

IN THE SUPREME COURT OF THE STATE OF UTAH

--oo0oo--

FILED
UTAH APPELLATE COURTS
SEP 15 2005

Gregory K. Chase,
Plaintiff and Petitioner,

v.

Case No. 20020836-SC
20010399-CA

Jordan School District, a political subdivision of the State of Utah; and John Does I-V,
Defendants and Respondents.

- - -

ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed on July 29, 2005.

IT IS HEREBY ORDERED pursuant to Rule 45 of the Utah Rules of Appellate Procedure the Petition for Writ of Certiorari filed is denied.

For The Court:

Dated Sept. 15 2005

s/Michael J. Wilkins
Michael J. Wilkins
Associate Chief Justice

App. 2

IN THE UTAH COURT OF APPEALS

----ooOoo----

Gregory K. Chase ,	)	
	)	MEMORANDUM DECISION
Plaintiff and Appellant,	)	
	)	(Not for Official Publication)
	)	
v.	)	Case No. 20040575-CA
	)	
Jordan School District, a	)	FILED
political subdivision of the	)	(June 30, 2005)
State of Utah; and John Does	)	
I-V, individuals,	)	[2005 UT App 272]
	)	
Defendants and Appellees.	)	
	)	

Third District, Salt Lake Department, 030912785
The Honorable Tyrone Medley

Attorneys: D. Bruce Oliver, Salt Lake City for Appellant.
Mark L. Shurtleff and J. Clifford Peterson, Salt Lake City, for Appellees.

Before Judges Billings, Greenwood, and Jackson.

BILLINGS, presiding Judge :

Gregory K. Chase appeals the district court's (1) grant of summary judgement to Jordan School District and (2) denial of a motion to amend his complaint.

We affirm.[1]

"Summary judgement is appropriate if, viewing the evidence in light most favorable to the nonmoving party, the moving party is nevertheless entitled to a judgement as a matter of law." Warren v. Provo City Corp., 838 P.2d 1125, 1128 (Utah 1992). "Because the determination of whether summary judgement is appropriate presents a question of law, we accord no deference to the trial court's decision and instead review it for correctness." DOIT, Inc. V. Touche, Ross & Co., 926 P. 2d 835, 841 (Utah 1996). In addition, a district court's denial of a motion to amend a complaint will not be disturbed "absent an abuse of discretion resulting in prejudice." Jones v. Salt Lake City Corp., 2003 UT App 355, ¶ 7, 78 P. 3d 988 (quotations and citation omitted), cert. denied, 90 P. 3d 1041 (Utah 2004).

---

1. The State argues that the district court lacked subject matter jurisdiction over Chase's 42 U.S.C § 1983 claim because the claim is barred by Eleventh Amendment immunity. In particular the State contends that governing Utah caselaw holds that school districts are immune from suit in state court because school districts are considered instrumentalities of the state for immunity purposes. See Campbell v. Pack, 389 P. 2d 464, 465 (Utah 1964) ("[S]chool districts are instrumentalities of the state acting in its behalf in educating children and as such partake of its sovereign immunity."). However, since the Campbell decision, the Tenth Circuit, following the United States Supreme Court in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977), has held that Utah school districts are not arms of the state for purposes of the Eleventh Amendment. See Ambus v. Granite Bd. of Educ., 995 F. 2d 992, 997 (10th Cir. 1993). In addition, since Mt. Healthy, most lower Federal Courts and state courts have declined to extend Eleventh Amendment immunity to local school districts and boards. Thus, while this issue has not been addressed in Utah since Campbell, in light of the prevailing national view that local school districts are not arms of the state, we choose to reach the merits of this case.

First, the trial court correctly granted summary judgement to Jordan School District because Chase's 42 U.S.C. § 1983 claim was insufficient to establish a claim for a deprivation of a constitutionally-protected liberty interest. Specifically, Chase resigned from his position as a police officer with Jordan School District and the alleged defamatory statement was not made in the course of terminating Chase's employment. See Siegert v. Gilley, 500 U.S. 226, 233 (1991) (holding that a psychologist employed by the federal government, who resigned under threat of termination and then sought other federal employment unsuccessfully because of an alleged defamatory letter from his previous employer, had not stated a claim for the violation of a protected liberty interest); Stidham v. Peace Officer Standards & Training, 265 F. 3d 1144, 1154 (10th Cir. 2001) (holding that pursuant to Siegert, the Plaintiff had failed to adequately state a claim for the violation of a constitutionally-protected liberty interest because he resigned from a governmental position and was subsequently unable to obtain the government employment he sought, allegedly due to defamatory statements.) Accordingly, we hold that summary judgement was proper because Chase failed to assert a claim for the violation of a protected liberty interest.

Second, the district court did not abuse its discretion in denying Chase's motion to amend his Complaint because the motion was untimely. Under rule 15(a) of the Utah Rules of Civil Procedure, after responsive pleadings have been served, "a party may amend his pleading only by leave of court . . . . ; and leave shall be freely given when justice so requires." Utah R. Civ. P. 15(a). In determining whether to allow amendment, "Utah courts . . . consider the following factors . . . : (1) the timeliness of the motion; (2) the justification for delay; and (3) any resulting prejudice to the responding party." Atcitty v. Board of Educ., 967 P. 2d 1261, 1264 (Utah Ct. App. 1998) ; see also Jones, 2003 UT App 355 at ¶ 16. Here, the district court found that the motion was untimely because (1) it was filed after the court issued its minute order stating it would grant summary judgement to Jordan School District, (2) it was filed eight months after Chase first learned that Clyde Shaw may have made a defamatory statement about him, and (3) Chase could have

pursued all of his discovery earlier to obtain information needed to add an additional party. Therefore, we conclude that the district court did not abuse its abuse its discretion in denying Chase's motion to amend his complaint.

Accordingly, we affirm.

s/Judith M. Billings
Judith M. Billings,
Presiding Judge

WE CONCUR:

s/Pamela T. Greenwood
Pamela T. Greenwood, Judge

s/Norman H. Jackson
Norman H. Jackson, Judge

20040575-CA

App. 6

20040575-CA

UTAH COURT OF APPEALS

GREGORY K. CHASE,

Plaintiff and Appellant,

vs.

JORDAN SCHOOL DISTRICT and JOHN DOES I-V,

Defendants and Appellees.

On Appeal from Decision of the Third Judicial District Court,
Salt Lake Department, the Hon. Tyrone E. Medley, presiding

BRIEF OF APPELLANT

D. Bruce Oliver #5120
D. BRUCE OLIVER, LLC
180 South 300 West, Suite 210
Salt Lake City, Utah 84101

Attorney for Gregory K. Chase

Morris O. Haggerty #5283
Mark L. Shurtleff #4666
PO Box 140856
Salt Lake City, Utah 84114

Attorneys for Jordan School District

**** ORAL ARGUMENTS REQUESTED ****

D. Bruce Oliver #5120
Attorney for Gregory K. Chase
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
Telephone: (801) 328-8888
Fax: (801) 595-0300

IN THE UTAH COURT OF APPEALS

GREGORY K. CHASE, Plaintiff and Appellant, vs. JORDAN SCHOOL DISTRICT and JOHN DOES I-V, Defendants and Appellees.	**BRIEF OF APPELLANT** Case No. 20040575-CA

PRELIMINARY STATEMENT

This is an appeal of a former police officer employee of Jordan School District, Gregory K. Chase, who after voluntarily resigning from the district, sought employment with another police department, Midvale City Police. While his application was pending, an assistant chief of Midvale P.D., Dan Pearson, spoke with the chief of Jordan School District, Clyde Shaw, outside of Jordan School District policy concerning Mr. Chase. In that conversation, the chief expressed knowingly false and defamatory statements to Asst. Chief Pearson which ultimately proximately resulted in Mr. Chase's denial of

employment. At the time of the conversation, Chief Shaw, while in uniform and as Chase's former supervisor, Chief Shaw acted under *color* of authority, whether "any statute, ordinance, regulation, custom, or usage of any state." See 42 U.S.C. § 1983.

STATEMENT RELATED TO OTHER APPEALS

Mr. Chase has a related appeal pending before this Court against the City of Midvale, concerning its failure to employ Mr. Chase. See *Gregory K. Chase v. Midvale City*, et al., 20041127-CA. In that matter, Midvale deliberately disregarded following its hiring policy under the direction of Chief Maughan.[1] Once Mr. Chase discovered that he was the victim of defamation and that it compromised his application for employment, he sought remedy available to him under Midvale's hiring policy by protesting to the chief. In a despotic arbitrary and capricious manner, Midvale disregarded policy and refused to reconsider Mr. Chase's application for employment even though he possessed substantial evidence against the false statements. (R at 279-284). In short, the totality of the acts and omissions resulted in the denial of equal protection and uniform operation of the law. Within the inherent powers of this Court, in its discretion these two appeals may be consolidated.

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by *Utah Code Ann.* § 78-2-2(4) (1953, as amended). (The Court of Appeals has jurisdiction over matters transferred to it by the Utah Supreme Court).

STATEMENT OF ISSUES

1) Whether Judge Medley erred in dismissing Mr. Chase's claim of defamation against Jordan School District for the foreclosure of another employment opportunity?

---

1. Interestingly, Gerald Maughan was the defendant of a former appeal when he was the assistant chief in the West Valley City Police Department. *See J.H. v. West Valley City*, 840 P.2d 115 (Utah 1992).

2) Whether Judge Medley erred in denying Mr. Chase's motion to amend the complaint substituting Clyde Shaw in his personal capacity in lieu of the defendant Jordan School District?

STANDARD OF REVIEW

The standard of review regarding questions of law, this Court accords no deference to the trial court and reviews the trial court's decisions for correctness. *J.H. v. West Valley City*, 840 P.2d 115 (Utah 1992).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Utah State Const., Art. I, § 7.
Utah State Const., Art. I, § 24.
U.S. Const., 5th Amend.
U.S. Const., 14th Amend.
Utah Code Ann. § 78-12-28 (2003)
42 U.S.C. § 1983

STATEMENTS OF THE CASE

I. Nature of the Case:

This is a civil action wherein, Mr. Chase appeals his 42 U.S.C. § 1983 action for defamation and deprivation of liberty interest claims. (R at 359) This case arises out of the wrongful interference of an employment application in that both Jordan School District and Mr. Chase's prospective employer, as public employers have established employment policies and procedures. (R at 1-30) In respect to Jordan School District, Chief Clyde Shaw made knowingly false and reckless statements about him under color of his apparent authority as the Chief of Jordan School District and as the former supervisor of Mr. Chase. (R at 297-99) The statements were defaming and resulted in the deprivation of a liberty interest (i.e., an employment opportunity).

II. Course of the Proceedings:

Mr. Chase appeals Judge Medley's decision to grant Jordan School District Summary Judgment and for the denial to amend the plaintiff complaint to sue Clyde Shaw in his personal capacity–since the granting of summary judgment was as to Jordan School District (the only party previously sued) in its official capacity.

On June 6, 2003, Mr. Chase sued Jordan School District and John Does I-V.[2] (R at 1-30) Prior to filing, Midvale City refused to share with Mr. Chase the name of his tortfeasor from Jordan School District, and Jordan School District ignored Mr. Chase's notice of claim. (R. at 2). Nevertheless, Jordan School District responded on July 1, 2003 by filing an Answer. In that Answer, the defendant claimed in part that it was "without knowledge or information sufficient to form a belief as to the truth of" all of Plaintiff's factual allegations 9-22.[3] (R at 31) An attorney planning meeting was conducted on August 18, 2003 and the report was filed on August 29, 2003. (R at 36-39) In that schedule, inter alia, the parties agreed to exchange initial disclosures by September 12, 2003; to the cut-off the date to amend pleadings by November 3, 2003; to complete all discovery by April 16, 2004; and to a dispositive motion cut-off of May 21, 2004.

---

2. John Does were sue because at the time of filing the details of and the source of the defamation against Mr. Chase was unknown to him. It was during the course of litigation that the individual, Clyde Shaw was made known to him. Since Mr. Chase alleged conduct of employees in their official capacity, no amendment was sought to include a cause of action against Mr. Shaw in his personal capacity until after the discovery and the dismissal by the court. (R. at 2). *See, Adamson v. Provo*, 819 F. Supp. 934, 947 (D. Utah 1993) ("Utah Code Ann. § 78-12-28(1) provides two years for actions against officials acting in their "official capacity.")

3. In violation to Utah R.Civ.P. 8 and the principles of the notice of claim requirements of the Governmental Immunity Act, formerly 63-30-1 et seq. Jordan School District's averments were never amended,

Then the parties engaged each other in discovery. (R at 63-64; 95-96; 97-98) Five months into discovery and four months early, defendant filed its Motion For Summary Judgment. (R at 45-58) The motion was filed without amending its Answer. (R at 31-35) In that motion, defendant claimed, inter alia, that because Chase voluntarily resigned from employment with the Jordan School District, and applied for employment elsewhere, plaintiff could not assert a liberty interest claim for any subsequent defamation. (R at 45-46)

The defendant's motion was supported by memorandum and the affidavit of George A. Welch, the executive director for the school district. (R at 59-60) During the pendency of the motion, the parties continued to conduct discovery, including the deposition of Dan Pearson on April 15, 2004 and April 28, 2004. (R at 189; 191) Meanwhile, before the deposition had taken place, Mr. Chase responded to motion for summary judgment on February 23, 2004. Jordan School District filed a reply on February 26, 2004. On Jordan School District's request to submit for decision, the Court scheduled oral arguments and a hearing was conducted on May 10, 2004 before the Honorable Tyrone E. Medley. At the conclusion of the hearing, the court took the motion under advisement. The following day, May 11, 2004, Judge Medley issued a minute entry granting summary judgment based upon "all of the undisputed material facts, and all of the legal authorities and analyses set forth in defendant's Memoranda in support and reply."

On May 20, 2004, believing the matter dismissed only Jordan School District and before a final order was submitted, plaintiff moved to amend his complaint substituting John Does I - V with Clyde Shaw, based upon the testimony of Dan Pearson on April 15, 2004 and April 28, 2004. (R at 251-304) During the deposition, it was revealed that counsel, Morris O. Haggerty had known the details of the Dan Pearson-Clyde Shaw conversation, and of the defamation done by Clyde Shaw since April 2003 during a private interview. (R

---

even when it filed it's Motion For Summary Judgment–at that time it obviously was aware that Clyde Shaw made the defaming statements. (R at 86-90).

at 269; 304) This revelation obviously demonstrated that the averments contained in the Answer filed on July 1, 2003 was not done in good faith and justified the filing of an Amended Complaint. (R at 269) The plaintiff's Amended Complaint was filed on May, 20, 2004, contemporaneously with Chase's motion to amend and his supporting memorandum and affidavit relying, among other things *Boyce v. Marble*, 982 P.2d 565, 568 (Utah 1999) ("On occasion, justice and fairness will require that a court allow a party to designate witnesses, conduct discovery, or otherwise perform tasks covered by a scheduling order after the court-imposed deadline for doing so has expired")[4] (R at 253) On June 1, 2004, Judge Medley signed the order dismissing Jordan School District. (R at 318) On that same date, the school district opposed Chase's motion to amend, despite being dismissed from the action. (R at 307) Because Plaintiff believed that the school district lacked standing to oppose the motion to amend, Mr. Chase filed a motion to strike the memorandum on June 15, 2004. (R at 328) On June 16, 2004, the school district responded to the motion to strike. (R at 344) On June 18, 2004, Judge Medley issued a minute entry again in favor of the school district incorporating "all of the legal analyses and authorities set forth in defendant's Memorandum in opposition." (R at 348)

On July 1, 2004, a final order was entered against Mr. Chase. (R at 351) This appeal followed with the filing of Mr. Chase's Notice of Appeal on July 2, 2004. (R at 359)

III. <u>Disposition in Trial Court</u>:

As stated above, on June 1, 2004, an order was entered against Mr. Chase granting summary judgment for Jordan School District. (R at 318) (Addendum "A"). Then on July 1, 2004, the order was entered against following rejection of plaintiff's motion to amend complaint. (R. at 351) (Addendum "B").

---

4. even though in this matter no scheduling order had been imposed by the court because the parties <u>only</u> agreed to a plan. See attorney's planning meeting reports. (R. at 36-39).

STATEMENT OF FACTS.

In approximately April, 2002, Mr. Chase voluntarily resigned from his employment with Jordan School District. He was employed there from 1994 to 2002 as a police officer. When he left Jordan School District it was not under a threat of discharge, rather he left in good standing.

Three months later in June, 2002, Mr. Chase applied for a position with Midvale City and the Midvale City Police Department for a police officer position. He passed the "B-Pad" written examination, and shortly thereafter, pursuant to policy he was scheduled for an oral interview with a Oral Board of four members.

Before appearing before the board, unbeknownst to Mr. Chase, a person or persons at the Jordan School District (later discovered to be Clyde Shaw of Jordan School District, the Chief of Police and Mr. Chase's supervisor) conveyed knowingly false information about Mr. Chase to Dan Pearson, an assistant police chief of Midvale City.

In his deposition, Dan Pearson testified:

Q All right. Now, it has been reported that you were privy to a comment made by Clyde Shaw about Greg. Are you familiar with the comment that I am talking about?

A Uh-huh.

Q What comment was that?

A I was attending a LEADS meeting at the Salt Lake County Sheriff's Office. Prior ro the meeting starting, everyone is walking around having small talk with each other and I had gone up and gotten a drink and was standing there and Clyde Shaw walked up and, to the best of my recollection, Clyde had been off sick or something, I don't remember

exactly what for, but it sticks in my mind that he had been off for awhile because of some illness. And so I asked how he was doing. He said he was doing better. I asked him how things were going and he made the comment to me that it had been – t had been a pretty good week. And I asked what he meant, or something along that line, and he indicated to me that they had gotten rid of Greg Chase, and he said that it was a very happy morning for him when he was able to drive Greg Chase home and drop him off and know that he had gotten rid of a significant problem we had. That's the crux of it. I don't remember the exact wording but that was basically what was said.

Q Did you – at that time did you ask him why Greg had been a problem?

A I didn't go into this in depth. He just indicated that it had been a long standing problem and that was – I mean that was the end of the conversation.

(R at 297-99) He, in turn, conveyed that false information to Tim Start, one or more members of Chase's hiring board of the Midvale City Police Department. (R at 289) Mr. Start shared this information with another member of the board, Tony Mason, that he heard in fact Mr. Chase had been fired from Jordan when he was not. (R at 290; 294) When Start compared the false information to Mr. Chase's application, Tim Start concluded that Mr. Chase was lying. (R at 80; 81-84) The application reads, "Reason for Leaving: Wanting to do something new" is what Mr. Chase wrote. (R at 83)

THE FOLLOWING FACTS ALLEGED IN PLAINTIFF'S COMPLAINT ARE DEEMED ADMITTED PURSUANT TO UTAH R.CIV.P. 8 FOR NON-DENIAL (Except as otherwise referenced to the record elsewhere):

So Mr. Chase entered into a hostile oral hiring board feeling

optimistic about his chances for hire, as he has been in law enforcement for nineteen (19) years; he knew most of the officers in the Midvale City Police Department; and he was a Midvale resident. (R at 80; 87; 282) When Mr. Chase went into the room for the oral interview, he felt comfortable and confident, as he knew all four (4) of the individuals on the Oral Board. As each member asked Mr. Chase questions, he answered each question openly and honestly. As he left, he felt as though he had done a really good interview. (R at 4)

After having not heard anything back from Midvale City Police Department during the following almost three (3) weeks, Mr. Chase contacted one of the individuals in the Oral Board, Brian Todd. This individual advised Mr. Chase that Mr. Chase has ended up being ranked somewhere around 12th to 14th on the hire list. At first, Mr. Chase thought Mr. Todd was just joking with him. Then, after a few minutes, Mr. Chase realized that Mr. Todd was serious. Mr. Chase asked "how could this be?" Mr. Todd explained that one of the individuals on the Oral Board, Tim Start, had told the others of the Oral Board before Mr. Chase even walked into the interview room that: (1) Mr. Chase was lying about why he had left his previous employer, that Mr. Start told the others in the room that he had a good source-that someone from Mr. Chase's previous employer had told them that Mr. Chase had been fired but that Mr. Chase had not quit; and (2) Mr. Start also stated that someone from Mr. Chase's previous employer had told them that Mr. Chase had been called by his Chief one day, told to turn in all his equipment and gear, and was driven home by the Chief. Tim Start stated that because of such things, Mr. Chase must be lying about his previous employment history and, therefore, he was going to fail Mr. Chase in the oral interview. (R at 4)

Tim Start, along with another individual on the Board, Tony Mason, both failed Mr. Chase on question

> # 4). Tell us about your employment history for the past 5 years and question # 4a. Why did you leave those jobs?"

Both of the individuals gave Mr. Chase the failing grade zero (0) points for his answer (which, by the way, Mr. Chase answered honestly and correctly). (R at 5)

Mr. Todd, the officer who advised Mr. Chase of what had happened before the Oral Board interview, also told Mr. Chase that he should contact the Midvale City Chief of Police and let him know of what happened. That same day pursuant to policy, (R at 219; 299), Mr. Chase did try to contact the Chief to lodge a protest, but only got his answering machine. The next day one of the individuals on the Oral Board, and one who had failed Mr. Chase based upon Start's false information, Tony Mason, contacted Mr. Chase. This individual (Tony Mason) advised Mr. Chase that the Chief would not bring up what he knew about what happened before he met with the Oral Board, and Mr. Mason denied any knowledge of what had been reported to hm by Todd Brian. (R at 6)

Therefore, Mr. Chase re-contacted Brian Todd and Mr. Todd once again told Mr. Chase how Mr. Start had stated that someone from Mr. Chase's previous employer had told them that Mr. Chase had been fired and that Mr. Chase had been fired and that Mr. Chase was lying to them about his quitting his pervious employer. Mr. Chase told Mr. Todd again that he had not been fired, that he had voluntarily resigned. Mr. Chase even stated that he would show the Oral Board a copy of his letter of resignation, and the letter from his former Chief, Defendant Shaw, who stated that Mr. Chase left in good standing. (R at 219; 224; 279) Mr. Chase even offered to show them the decision from an unemployment judge. (R at 282; 284) (At the time, Mr. Chase was attempting to get unemployment benefits, and Judge Patterson had denied his eligibility because Mr. Chase had quit and had not been fired). (R at 6)

Mr. Todd told Mr. Chase he had confronted Tim Start and Tony Mason about their comments before Mr. Chase's interview with the Board; telling them that he personally had spoken to Mr. Chase, and that Mr. Todd personally would like the opportunity to verify everything Mr. Chase had been telling him through performing a background check on Mr. Chase. Messrs. Start and Mason told Mr.

Todd that would not be necessary, that they were sure Mr. Chase had been fired, and that Mr. Chase had lied to the Board. (R at 7)

Mr. Chase couldn't understand how someone who had as much experience as he had who had done so much for the State of Utah, could be "blacklisted" based on false information. Mr. Chase had been involved in many high profile events/cases in the State's history over the last 20 years. He had worked on the Unsolved Homicide Task Force, the Original Gang (Operation Red Flag) Task Force, the Mark Hoffman (Mormon Murder Investigation), the Ervil Lebaron Task Force; he was an original member if the FBI's Fugitive/Violent Crimes Task Force. Mr. Chase could not believe how someone with this much background was now not even able to get a fair interview. (R at 7; 88)

Mr. Chase then contacted Attorney Shawn Robinson, and explained what was going on. Mr. Chase told Mr. Robinson that within days of being interviewed that he could not talk to the Midvale City Chief of Police, he received a letter from Tony Mason, one of the individual's who had failed him, stating that all information in regard to Mr. Chase's testing and oral interview was going to be destroyed within a few days. Attorney Robinson subpoenaed the information on the testing results, which showed exactly what Mr. Chase had already been told, that he had failed on that particular question by Tim Start and Tony Mason. (#4, 4a). (R at 8)

During the next week or so, Mr. Chase contacted Midvale City Councilman Wayne Sharp, and told him about what happened, and how Mr. Chase knew the Board had not handled this situation properly. Mr. Sharp advised Mr. Chase that he would look into this matter. Within a week, Mr. Chase received a phone call from Mr. Mason, who indicated that he wanted Mr. Chase to come in for a talk. Mr. Chase figured that maybe at this point he would get what he was asking for, an apology and the name of the person from his previous employer who uttered or published false information about him. Instead, all Mr. Mason wanted to talk about was that the other person on the Oral Board (Brian Todd) who had told Mr. Chase

about what had happened. Mr. Mason wanted a statement from Mr. Chase about what Mr. Todd had told Mr. Chase. Mr. Chase refused to give information to him. Mr. Chase asked Mr. Mason directly for the name of the person from his previous employer who had since said these things about him. Mr. Mason would not respond. Mr. Chase asked Mr. Mason if Mr. Chase would sign a waiver allowing the Board to get Mr. Chase's personnel records from his previous employer to see under what circumstances Mr. Chase did leave. Mr. Chase agreed and signed the waiver. As Mr. Chase was leaving, Mr. Mason stated, "If it's not like your saying, maybe you can test again, then, next time you'll get a fair interview!" Mr. Chase left even more frustrated. (R at 8-9)

Next, Mr. Chase had a meeting with the Midvale City Administrator, Lee King. Mr. Chase told Mr. King that he was aware of the problems Brian Todd was now experiencing because he had spoken to Mr. Chase regarding what had happened during the Oral Board. Mr. Todd had been told he was going to be written up, not allowed to participate on the Oral Board anymore, and that he could not even possibly be terminated. Mr. Chase told Mr. King they were harassing the wrong person, that they should be looking in to the actions of Tim Start and Tony Mason, who had slandered him, who actually violated City Policies and Procedures, and taken away Mr. Chase's opportunity to work for Midvale City Police Department. Instead, they were going after the honest, ethical person. Mr. King told Mr. Chase that they had spoken to Tony Mason and Mr. Mason stated, "What was said before Mr. Chase's interview, didn't really have any effect on how they scored him." (An admission that it had actually occurred.) Mr. Chase asked Mr. King how Messrs. Start and Mason knew it had no effect? Mr. King had no answer. Mr. Chase told Mr. King that all Mr. Chase wanted at the time was the name of the person from his previous employer who distributed the false information to Midvale City. (R at 9-10)

Subsequently, Mr. Chase learned that Brian Todd had several meetings regarding this situation. Mr. Todd had one meeting with Tony Mason, the superior officer who failed Mr. Chase in the oral interviews, and the one with the Lee King, the City Administrator.

Mr. Chase is aware of what came out of those meetings, and aware of the evidence that proves that what Mr. Todd told Mr. Chase did in fact occur, and the actions of those covering this up. (R at 10)

After speaking to Lee King, Mr. Chase left several messages for the Mayor of Midvale City, JoAnn Seghirst, to contact Mr. Chase but never received a response. (R at 10)

SUMMARY OF THE ARGUMENT

In this appeal, Plaintiff appeals his § 1983 defamation / damage to reputation claim only being that the issue will be dispositive in his favor. Under the controlling authority of the Supreme Court of the United States, *Paul v. Davis*, 424 U.S. 693, 47 L. Ed 2d 405, 96 S. Ct. 1155 (1976), a plaintiff can only maintain a lawsuit for defamation under 42 U.S.C. § 1983, it he can demonstrate that 1) he suffered an injury to his reputation, and 2) he suffered an injury to some more tangible interest such as a loss of government employment or the loss of a preferred regulatory status. In this matter both elements are present. On or about April, 2002 while applying for a position with the Midvale City Police Department, Clyde Shaw, plaintiff's former supervisor and chief of police for the Jordan School District, made knowingly or recklessly damaging statements about Chase that were false. These false statements were damaging to Chase's reputation and ultimately proximately caused the loss of Chase's employment opportunity with Midvale Police.

Given the fact the Plaintiff has a genuine § 1983 defamation claim, the Court can find and should find that both Jordan School District and Clyde Shaw are liable to Plaintiff for his damages to reputation and loss of an employment opportunity, which includes his accrued 19 years retirement.

It is believed that Jordan School District is liability to plaintiff in state court pursuant to Utah Code Ann. § 78-12-28 (2003) and *Adamson v. Provo*, 819 F. Supp. 934, 947 (D. Utah 1993). Section 78-12-28 reads:

> An action may be brought within two years:
>
> (1) against a marshal, sheriff, constable, or other officer for liability incurred by the doing of an act in his official capacity, and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution;
>
> (2) for recovery of damages for a death caused by the wrongful act or neglect of another;
>
> (3) in causes of action against the state and its employees, for injury to the personal rights of another if not otherwise provided by state or federal law; or
>
> (4) in causes of action against a political subdivision of the state and its employees, for injury to the personal rights of another arising after May 1, 2000, if not otherwise provided by state or federal law.

Utah Code Ann. § 78-12-28 (2002). *Adamson*, discusses the differences between Section 78-12-28 and § 1983, explaining, "Utah Code Ann. § 78-12-28(1) provides two years for actions against officials acting in their "official capacity." Plaintiff urges this Court to interpret that Section 78-12-28(4) that same as 7812-28(1) as being in an official capacity because it is beyond contestation that Jordan School District is a political subdivision.

Notwithstanding, under § 1983, Chase should have been permitted to amend his complaint to pursue his claims directly at Clyde Shaw if the Court was inclined to dismiss Jordan School District out. Instead, without explanation the judge denied the request adopting everything the district argued.

ARGUMENT

POINT I.

UNDISPUTABLE, PLAINTIFF GREGORY K CHASE HAS AN ACTIONABLE § 1983 CLAIM FOR DAMAGE TO HIS REPUTATION.

In this matter, plaintiff urges this Court to follow the sound

discretion of the Supreme Court of the United States in *Paul v. Davis*, 424 U.S. 693, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976). In *Paul*, the Supreme Court has held that something more than mere defamation must be involved in order to state a claim under § 1983 for defamation. The Court explained that an injury to reputation alone, apart from injury to some more tangible interest such as the loss of government employment or the loss of preferred regulatory status, is neither liberty nor property sufficient to invoke the protection of the Due Process Clause. 96 S. Ct. at 1161 (explaining that reputational interests protected by Due Process Clause must stem from sanction applied by law as opposed to sanction applied by public opinion).

In this matter, Mr. Chase asserts a liberty interest–his good name, reputation, honor, and integrity. The Tenth Circuit Court of Appeals has recognized that an individual's reputation is a protected liberty interest. *Flanagan v. Munger*, 890 F.2d 1557 (10th Cir. 1989). In order to prevail, *Flanagan*, like the Supreme Court in *Paul*, has also required plaintiffs to show that their reputation was damaged "in connection with [an] adverse action taken against them." *Id.*, at 571. In other words, "defamation, standing alone, [is] not sufficient to establish a claim for deprivation of a liberty interest." *Renaud v. Wyoming Dep't of Family Servs.*, 203 F.3d 723, 726-27 (10th Cir. 2000).

Taking *Paul* a step further, in *Workman v. Jordan*, 32 F.3d 475 (10th Cir. 1994), the Tenth Circuit Court of Appeals integrated Chase's asserted interest claims here into a four-part test for whether statements infringe upon "a liberty interest in [one's] good name and reputation as it affects [one's] property interest in continued employment." *Id.* at 480.

> First, to be actionable, the statements must impugn the good name, reputation, honor, or integrity of the employee. Second, the statements must be false. Third, the statements must occur in the course of terminating the employee or must foreclose other employment opportunities. And fourth, the statements must be published.

Id. at 481 (citations omitted) (emphasis added). In this matter, applying the *Workman* Plaintiff should have prevailed against the defendant's motion for summary judgment. It is not disputed that Clyde Shaw made statements against Chase that impugned his good name and reputation. Chief Shaw led Pearson to believe that Chase caused long term trouble and had been fired from the school district. All three Midvale officers who did testify in this matter, were unanimous. The allegations were that Mr. Chase was fired, that he was lying on his application. (R at 286-304) Comparing the statements of Shaw's own letter and other correspondence from the school district to those statements allegedly announced to Pearson, the record demonstrates that those public statements were obviously false. (R at 279-284) Plaintiff does not assert that his deprivation occurred in the course of termination, but rather in the foreclosure of another employment opportunity–the Midvale hiring. It is undisputed that Mr. Chase resigned from Jordan School District. It is Shaw's LEADS meeting publication[5] of these false statements to Dan Pearson that resulted n damage to Mr. Chase's reputation and deprived him of his only opportunity to employ in his hometown of Midvale. In *Paul*, the Court determined that an individual is deprived of a protected liberty interest "'where government action has operated to bestow a badge of disloyalty or infamy, with an attendant foreclosure from other employment opportunity.'" *Paul*, 424 U.S. at 705 (*quoting Cafeteria Workers v. McElroy*, 367 U.S. 886, 898, 6 L. Ed. 2d 1230, 81 S. Ct. 1743 (1961)) (emphasis supplied by *Paul* Court). Similarly, in *Board of Regents v. Roth*, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972), the Court held that a liberty interest would be deprived where "the State . . . imposed on [the plaintiff] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." *Id.* at 573 (emphasis added). No doubt Mr. Chase was stigmatized by the statements; once the information passed around no one gave him a chance at Midvale.

---

5. In slanderous situations "publication" is accomplished by bringing them to the attention of the public; announcements, and it situations of libel it is accomplished by circulating the false statements in print. *Black's Law Dictionary*, at 54 (abrid, 6th ed.)

In this matter, Plaintiff certainly was stigmatized by the disparaging comments of Clyde Shaw. It is equally clear that all these persons were aware of the irreversible damage because nobody but Brian Todd would hone up to the fact that the statements were even being said. A fair board would have confronted him on the allegations.

Under the above-stated cases, Mr. Chase is clearly entitled to both his day in court and fair compensation–(i.e., back wages and his retirement). But instead of finding in Plaintiff's favor, the Court sided with a twist in the law that was presented by the defendant. Had the plaintiff been more persuasive to the judge, this appeal would not have been necessary. Correcting te result through an appeal is always the hard and tedious way to get to trial.

The twist in the law is what has followed the *Paul* decision. In 1991, the U.S. Supreme Court confused the question of "foreclosure of employment opportunities." In *Siegert v. Gilley*, 500 U.S. 226, 114 L. Ed. 2d 277, 111 S. Ct. 1789 (1991), the Court held that when a plaintiff resigns from employment and an allegedly defamatory statement is made thereafter, he has no cause of action for a liberty interest.

Siegert, a clinical psychologist, resigned under threat of termination from a hospital operated by the Federal Government in Washington, D.C. Siegert then attempted to gain employment at United States Army hospitals in Germany, which required that his former employer provide information on Siegert's job performance. Siegert's former supervisor responded by letter that Siegert was "inept and unethical, perhaps the least trustworthy individual I have supervised." *Id.* at 228 (citation omitted). "After receiving this letter, the Army Credentials Committee told Siegert that since reports about him were extremely unfavorable . . . the committee was recommending that [Siegert] not be credentialed." *Id.* (citation omitted). Soon after exhausting his administrative appeals, the Court noted, Siegert's "federal service employment [was] terminated." *Id.* at 229. Thus, the alleged defamation written by Siegert's former federal employer effectively prevented Siegert from gaining new

employment in his field in United States Army hospitals and perhaps other federal institutions.

The Supreme Court held that Siegert did not state a claim for the violation of a protected liberty interest. *See id.* at 233-34. The Court reasoned that Siegert had not been terminated incident to the alleged defamation and that damage flowing from an injury to one's reputation "may be recoverable under state tort law but it is not recoverable in a [federal] action." *Id.* at 234. Inexplicably, and despite a vociferous dissent, the five-member majority in Siegert made no reference to the constitutional deprivation of liberty caused by the foreclosure of employment opportunities, which the Court had previously approved in *Paul*.

In the recent 2001 Tenth Circuit case, *Stidham v. Peace Officer Standards and Training*, 265 F.3d 1144 (10th Cir. 2001), where the facts were indistinguishable to *Siegert*, the Court affirmed the dismissal. But the Court also clarified *Siegert*, stating that the Supreme Court did not expressly overrule its prior precedents *Paul*, *Cafeteria Workers*, and *Roth*. But then turning to Stidham's situation it added,

> however, despite its lack of explanation, the Court's holding in Siegert compels us to conclude that even though this action would have survived under Paul and its progeny, it has foreclosed relief under the Liberty Interest Clause of the Constitution on the facts alleged in this case.

Id., at 1154. This matter, fortunately is distinguishable from both *Stidham* and *Siegert*. In both *Stidham* and *Siegert*, those plaintiffs resigned under the threat of termination. In this matter, Chase resigned in good standing–in a July 22, 2002 letter from George Welch, he wrote "The fact remains that Mr. Chase could still be working for the Jordan School District had he not chose to quit." (R at 284) So subsequent to Chase's resignation, (R at 281-282), when Clyde Shaw allegedly made the defamatory statements to Dan Pearson, Chase was certainly damaged from his future employment opportunity with Midvale. The statements he expressed to Dan

Pearson is even belied by Chief Shaw's own letter of recommendation. (R at 223-24; 279) he was even informed that hd he not resigned he certainly would have had remained employed. So subsequent to Chase's resignation, when Clyde Shaw made the defamatory statements to Dan Pearson, Chase was certainly damaged from his future employment opportunity with Midvale. The statements he expressed to Dan Pearson is even belied by Chief Shaw's own letter of recommendation.[6]

Based upon the foregoing facts and legal analysis, it is clear that Mr. Chase was damaged by Clyde Shaw's alleged publication to Midvale City via the LEADS meeting and Asst. Chief Pearson. Because of the type of allegations made against Chase concerns his profession, it is clear that the allegations were slander per se. Shaw knew or would have to know that such comments were damaging to one's reputation and would ultimately foreclose any opportunity Mr. Chase had for employment in te Midvale Police Department. Being a Midvale City resident, it would also have to be suspected that Mr. Chase would apply for a position with Jordan School District as well. It seems too coincidental that Chief Shaw would make these claims

---

6. This very conflict of inconsistent statements brings to light the obvious existence of disputed material fact that a jury should have been permitted to resolve: (1) either Chief Pearson is lying to cover for Midvale, (2) the conversation never happened between the chiefs while at LEADS, (3) the letter by Chief Shaw is to cover for his erroneous statements at LEADS, or (4) the scenario alleged by the parties between both departments is the product of collusion in the face of Mr. Chase's lawsuit, when they received the Plaintiff's Notices of Claim. Chief Pearson testified that he had been contacted the year prior by Morris Haggerty, the attorney for Jordan School District. No correct information was revealed in the Answer prepared by the defendants in violation of Rule 8. See Answer ¶¶9-22. (R at 31-35)

to a Midvale Assistant Chief the way that he did.[7]

[* * * *]

CONCLUSION.

Based upon the foregoing, the Plaintiff hereby respectfully requests that the decisions of the lower court be vacated. One, in state court, plaintiffs can sue political subdivisions including the Jordan School District in its official capacity for employee conduct and omissions. On the other hand, plaintiff could maintain and should have been given the opportunity to amend his complaint to name Clyde Shaw in her personal capacity. Because the plaintiff's situation is distinguishable to *Siegert* and *Stidham*, and is apparently controlled by *Paul*, and its progeny, this Court should reverse Judge Medley's orders and remand this bact to the trial court for trial disposition.

RESPECTFULLY SUBMITTED this 7th day of January, 2005.

s/D. Bruce Oliver
D. BRUCE OLIVER
Attorney for Plaintiff and Appellant

---

7. Unfortunately, because motive or intent is a proper question for a jury to consider, with this matter being granted on summary judgment, unless this Court overturns the decision, Plaintiff has been deprived the opportunity to have the jury consider the question.

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **BRIEF OF APPELLANT**, postage prepaid, to:

Morris O. Haggerty
Mark L. Shurtleff
OFFICE OF THE ATTORNEY GENERAL
160 East 300 South Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

DATED this 7th day of January, 2005.

s/D. Bruce Oliver

IN THE UTAH COURT OF APPEALS

----ooOoo----

Gregory K. Chase,	) MEMORANDUM DECISION
	) (Not for Official Publication)
Plaintiff and Appellant,	)
	) Case No. 20041127-CA
v.	)
	) FILED
Midvale City, Tim Start, and Tony Mason,	) (October 20, 2005)
Defendants and Appellees.	)

Third District, Salt Lake Department, 030905866
The Honorable Timothy R. Hansen

Attorneys: D. Bruce Oliver, Salt Lake City for Appellant
David L. Church, Salt Lake City, for Appellees

Before Judges Billings, McHugh, and Orme.

PER CURIUM:

Gregory K. Chase appeals the district court's orders granting of summary judgement against him and denying his motion for a new trial. We affirm.

This Court reviews a grant of summary judgment for correctness, with no deference to the trial court's conclusions lf law. See Rinderkneckt v. Luck, 965 P.2d 564, 565 (Utah Cr. App. 1998).

Summary judgement is appropriate only when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. See Utah R. Civ. P. 56(c). Where a summary judgment motion is supported by facts in the record or by affidavit, an opposing party must provide in its response specific facts showing that there is a genuine issue for trial. See Utah R. Civ. P. 56(e). If a moving party properly supports a motion for summary judgment with evidence and the opposing party fails to submit contrary evidence, "a trial court is justified in concluding that no genuine issue of fact is present.: Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 957 (Utah Ct. App. 1989). Even if the facts are undisputed, summary judgment is appropriate only if the moving party is entitled to judgment as a matter of law. See Lockhart Co. v. Anderson, 646 P.2d 678, 680 (Utah 1982).

Here, Chase did not timely respond to defendants' motion, so the facts are uncontroverted. Based on those undisputed facts, the trial court held that Chase's section 1983 claims failed as a matter of law because he did not identify a constitutionally protected interest. Section 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured." 42 U.S.C. § 1983 (2000). "Section 1983 is not itself a sources of substantive rights, but merely provides a method for vindicating federal rights, elsewhere conferred." Albright v. Oliver, 510 U.S. 266, 271 (1994). "The first step in any such claim is to identify the specific constitutional right allegedly infringed." Id.

Chase must identify a federal constitutionally protected interest of which he was deprived. He has not done so. It is well established that defamation is not a constitutional wrong. "Defamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation." Siegert v. Gilley, 500 U.S. 226, 233 (1991).

Chase resigned his position wit Jordan School District voluntarily, and then asserted that certain allegedly defamatory statements made afterward and unrelated to his quitting precluded him from obtaining other employment in his field. In Siegert, the Supreme Court applying Paul v. Davis, noted that Siegert resigned from his position; there was no defamation connected with terminating his employment. See id. at 234 (distinguishing Paul v. Davis, 424 U.S. 693 (1976)). The Supreme Court acknowledged that the alleged statements would no doubt hinder future employment opportunities. See id. The Court also noted that "[m] defamation plaintiffs attempt to show some sort of special damage and out-of-pocket loss which flows from the injury to their reputation." Id. The Court held, however, that "so long as such damage flows from injury caused by the defendant to a plaintiff's reputation, it ma be recoverable under state tort law but it is not recoverable in a [federal] action." Id.

Although Chase attempts to distinguish both Siegert and Stadham v. Peace Officer Standards & Training, 265 F.3d 1144 (10th Cir. 2001), the facts of his-case fall squarely within these cases, precluding a federal action for damage to his reputation. Chase has failed to assert a federally constitutionally protected interest within the meaning of section 1983. Thus, the trial court properly determined that Chase's section 1983 claims failed as a matter of law.

Chase also requests that this court review his claim of an equal protection violation under the state constitution, which, he asserts, may provide greater protection. However, this claim is not properly before the court. Chase did not raise any state constitutional clam in his motion for new trial. Raising a claim initially in a post-judgment motion does not preserve the issue for appeal. See Estate of Covington v. Josephson, 888 P.2d 675, 678 (Utah Ct. App. 1988).

Accordingly, the trial court's orders are affirmed.

s/Judith M. Billings
Judith M. Billings,
Presiding Judge

s/Carolyn B. McHugh
Carolyn B. McHugh, Judge

s/Gregory K. Orme
Gregory K. Orme, Judge

20041127-CA